

AMENDED IN ASSEMBLY JUNE 12, 2012

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL

No. 320

Introduced by Senator Wright

February 14, 2011

An act to add Sections 10968, 10969, *and* 10970, ~~and 10971~~ to the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 320, as amended, Wright. Public social services: hearings.

Existing law authorizes an applicant for, or recipient of, public social services who is dissatisfied with certain actions of the county welfare department to request a hearing from the State Department of Social Services. *Existing law requires the hearing to be conducted by an administrative law judge, with an exception, and authorizes the administrative law judge, under certain circumstances, to render and adopt final decisions, which decision the county director is required to comply and execute.*

~~This bill would authorize the department to develop a policy for hearing settlements that would be cost neutral or result in cost savings, including, but not limited to, the timely issuance of aid paid pending.~~

~~This bill would authorize the department to conduct a hearing by telephone.~~

~~This bill would authorize the department to develop a policy for expedited adjudication of cases where the county fails to meet its burden of proof as required by the department, provided that the implementation of this policy would be cost neutral or result in cost savings.~~

~~This bill would authorize the department to set up a prescribed workgroup to meet with stakeholders.~~

This bill would require the county appeals representative to review all evidence in the county's possession prior to the hearing and, if the representative finds prescribed occurrences, to offer the claimant a conditional withdrawal or notice of action, as specified. This bill would require the conditional withdrawal to specify the actions that the applicant or recipient and the county is required to complete within 30 days of the conditional withdrawal being signed by the claimant and received by the county representative, except as provided, and require the county to issue to the claimant a notice of action describing its compliance with the final decision. This bill would authorize a claimant to file for and reopen a state hearing under certain circumstances, at which the administrative law judge may render a final decision and order the county to comply with the final decision.

This bill would provide a claimant with the right to an in-person hearing, as defined, and authorize a claimant to request a hearing conducted by telephone, or other electronic means, or at his or her home. This bill would require the notice informing the claimant of the hearing to contain prescribed information. This bill would require the department to determine the format of the hearing if the county and the claimant disagree on its format.

Existing law requires, if regulations require an agency to write a position statement concerning the issues in question in a fair hearing or if the agency chooses to develop such a statement, that not less than 2 working days prior to the date of the hearing the agency make available to the applicant for, or recipient of, public social services a copy of the agency's position statement, with an exception.

This bill would require the county representative to prepare and transmit to a claimant who is scheduled for specified types of hearings and his or her representative the position statement so that it is received at least 2 working days prior to the hearing. This bill would require the administrative law judge to determine whether the county has met its burden of proof of establishing a prima facie case, with exceptions. This bill would require the administrative law judge to grant the claim if the judge finds that the county has not met its burden.

By imposing a higher level of service on county appeals representatives, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10968 is added to the Welfare and
2 Institutions Code, to read:
3 10968. (a) Prior to the hearing, the county appeals
4 representative shall review all evidence in the county's possession
5 relevant to the state hearing claim.
6 (1) If the hearing concerns a claimant's eligibility for a benefit
7 or service and the county representative finds that certain acts or
8 evidence would establish the claimant's eligibility for that benefit
9 or service or concludes that the county erred, the county
10 representative shall offer the claimant a conditional withdrawal
11 agreeing that the county shall issue the benefits or provide the
12 services for which the claimant is eligible after the claimant meets
13 conditions, if any, of the conditional withdrawal. If the county has
14 rescinded the proposed adverse action, the county shall issue a
15 notice of action informing the claimant of the county's action and
16 contact the client to advise the claimant the action was rescinded
17 and determine whether there were any other issues for the hearing.
18 (2) If the hearing concerns the validity of a CalWORKs
19 overpayment or CalFresh benefit overissuance allegation and the
20 county representative does not find evidence adequate to support
21 the validity of the overpayment or overissuance allegation then
22 the county representative shall offer the claimant a conditional
23 withdrawal agreeing both to cancel permanently the overpayment
24 or overissuance allegation and to refund to the claimant any money
25 already collected toward repayment of the alleged overpayment
26 or overissuance.
27 (b) (1) A conditional withdrawal pursuant to this section shall
28 specify the actions that both parties shall complete within 30 days
29 from the date the county appeals representative receives the

1 conditional withdrawal form signed by the claimant. The county's
2 30-day conditional withdrawal compliance period may be extended
3 by an additional 15 days from the date the claimant completes his
4 or her action required by the conditional withdrawal.

5 (2) The county shall comply with the terms set forth in the
6 conditional withdrawal, and issue a notice of action to the claimant
7 describing its compliance with the terms of the conditional
8 withdrawal. The notice of action shall be sent by the county within
9 the timeframe set forth in paragraph (1).

10 (3) (A) Upon receiving a timely notice of action from the county,
11 the claimant shall have 90 days, subject to the good cause
12 provisions of Section 10951, to file for a state hearing if the
13 claimant is dissatisfied with the county's actions specified in the
14 notice of action. This notice shall be treated like any other notice
15 of action.

16 (B) If the notice of action relates to the agreed upon terms of
17 the conditional withdrawal pursuant to paragraph (2), the
18 administrative law judge at the hearing shall have complete
19 discretion to determine if there is sufficient evidence in the record
20 to render a final decision resolving the dispute on the merits and
21 to order the county to comply with the terms of the final decision.

22 (4) If the county does not issue a notice of action as required
23 in paragraph (2), the claimant may reopen the state hearing to
24 enforce the terms of the conditional withdrawal. A reopened
25 hearing pursuant to this paragraph shall address whether the
26 county has complied with the terms of the conditional withdrawal,
27 and if the administrative law judge finds noncompliance with the
28 terms of the conditional withdrawal, the judge shall have complete
29 discretion to determine if there is sufficient evidence in the record
30 to render a final decision resolving the dispute on the merits and
31 to order the county to comply with the decision.

32 (c) (1) If a written conditional withdrawal is not provided to
33 the claimant in person at the time the county and the claimant
34 agree upon the conditional withdrawal, the county shall mail the
35 conditional withdrawal to the claimant.

36 (2) (A) Notwithstanding paragraph (1), the county shall, upon
37 request of the claimant and with the claimant's written permission,
38 electronically transmit a copy of the conditional withdrawal to the
39 claimant.

1 (B) *This paragraph shall become operative only after the*
2 *director of the department certifies to the Legislature that the*
3 *department has the technology to implement this paragraph in*
4 *compliance with privacy laws. Until this certification is made to*
5 *the Legislature, the department shall report annually to the budget*
6 *committees of the Legislature on the status of the technology*
7 *available to implement this paragraph.*

8 SEC. 2. *Section 10969 is added to the Welfare and Institutions*
9 *Code, to read:*

10 10969. (a) *The Legislature finds and declares that the financial*
11 *cost of attending an administrative hearing, and the limitations*
12 *on the ability to attend imposed by work, training, education, living*
13 *in areas lacking public transportation, lack of child care coverage,*
14 *illness or disability, and inclement weather, prevent a claimant*
15 *from accessing a hearing and exercising his or her full right to*
16 *due process of law. A hearing conducted by telephone, or other*
17 *electronic means, would enable the claimant to access the fair*
18 *hearing process when he or she is unable to attend the hearing in*
19 *person.*

20 (b) *For purposes of this section, “in-person hearing” and*
21 *“hearing conducted in person” means a hearing conducted in*
22 *person with face-to-face interaction between the parties.*

23 (c) *The department shall schedule a claimant’s initial hearing*
24 *pursuant to this chapter as the department deems appropriate and*
25 *within its resource limitations. However, a claimant shall have*
26 *the right to request and receive an in-person hearing.*

27 (d) *The notice acknowledging the receipt of the hearing request*
28 *shall provide information regarding the different formats of how*
29 *a hearing may be conducted, including in-person, by telephone,*
30 *or other electronic means, or at the claimant’s home, the right to*
31 *an in-person hearing, and how to request a specific type of hearing*
32 *before the hearing is scheduled.*

33 (1) *If the notice informing the claimant of the scheduled hearing*
34 *indicates the hearing shall be conducted by telephone, or other*
35 *electronic means, the notice shall also inform the claimant of his*
36 *or her right to have the hearing conducted in person or at the*
37 *claimant’s home pursuant to subdivision (g), and how to request*
38 *a change in the format of the hearing, including information on*
39 *the timeframe within which to make the request without extending*
40 *the time in which to issue the decision.*

(2) If the notice informing the claimant of the scheduled hearing indicates the hearing shall be conducted in person, the notice shall also inform the claimant of the opportunity to have the hearing conducted by telephone, or other electronic means, or at the claimant's home pursuant to subdivision (g), and how to request a change in the format of the hearing, including information on the timeframe within which to make the request without extending the time in which to issue the decision. The notice shall specify good cause reasons to change the method of the hearing, which shall include, but not be limited to, lack of transportation or child care, inclement weather conditions, conflicts with work or education schedules, or other good cause reasons as determined by the department.

(3) The department shall implement this subdivision in a manner that provides sufficient notice to a claimant regarding his or her ability to request a change in the format of the hearing, and shall provide on the hearing acknowledgment notice and scheduling notice a "yes" or "no" box that the claimant may check to request a change in the format of the hearing.

(e) The claimant shall inform the department of his or her request to change the format of the hearing within five days of receipt of the notice of scheduled hearing. The claimant's failure to meet the five-day requirement may result in a postponement of the scheduled hearing. If the request to change the format of the hearing occurs after this five-day period and the claimant's request for a hearing conducted by telephone, or other electronic means, is granted by the department, the claimant's original filing date shall be adjusted to the date the request was granted.

(f) (1) If the county seeks to request an in-person hearing, the hearing may be rescheduled to an in-person hearing with the concurrence of the claimant. If the claimant disagrees, the department shall decide the format of the hearing. The department may deny a county's request for an in-person hearing for good cause, as defined in paragraph (2) of subdivision (b) of Section 10951.

(2) Upon its decision to change the format of a hearing that was already set, the department shall reset the hearing and give both the claimant and the county 10 days advance notice of the time, place, and format of the new hearing.

1 (g) *The notice informing the claimant of the scheduled hearing*
2 *shall also inform the claimant of the right to request a hearing in*
3 *the claimant's home. The department may require from the claimant*
4 *seeking a hearing at his or her home medical verification*
5 *demonstrating that the claimant's condition prevents the claimant*
6 *from traveling to the hearing location. If the claimant is unable*
7 *to travel to a state hearing office and would prefer to attend the*
8 *hearing by telephone, or other electronic means, the claimant may*
9 *request that the hearing be conducted by telephone, or other*
10 *electronic means.*

11 (h) *The notice informing the claimant of the time and place of*
12 *the hearing shall also inform the claimant how to submit evidence*
13 *and other documents if the claimant or administrative law judge*
14 *will be appearing by telephone, or other electronic means.*

15 (i) *Notwithstanding Section 10952.5, for applicants or recipients*
16 *who are scheduled for hearings to be conducted by telephone, or*
17 *other electronic means, or at the claimant's home, the county*
18 *responsible for the hearing shall prepare and transmit the position*
19 *statement to the claimant and his or her designated representative*
20 *so that the position statement will be received at least two working*
21 *days prior to the hearing. The position statement may be*
22 *transmitted to the claimant electronically, if the claimant has an*
23 *e-mail address and is able to receive e-mail communications.*

24 SEC. 3. *Section 10970 is added to the Welfare and Institutions*
25 *Code, to read:*

26 10970. (a) *The county representative shall present the case*
27 *with appropriate evidence necessary to meet the county's burden*
28 *of proof of establishing a prima facie case. At the end of the county*
29 *presentation, the administrative law judge may determine on the*
30 *record whether or not the county has met its burden of proof. If*
31 *the administrative law judge determines that the county has failed*
32 *to meet its burden of proof, the claim shall be granted without any*
33 *further hearing.*

34 (b) *When determining whether the county has met its burden of*
35 *proof, the administrative law judge may take the matter under*
36 *submission and continue the hearing if he or she determines that*
37 *the issue is too complex to make a burden of proof determination*
38 *immediately following presentation of the county's case.*

39 (c) *Issues and claims not subject to a burden of proof*
40 *determination by the administrative law judge, include, but are*

1 *not limited to, jurisdiction, abandonment claims, and claims where*
2 *the claimant has failed to specify an issue and the county has been*
3 *unable to independently determine an issue in dispute.*

4 SEC. 4. *If the Commission on State Mandates determines that*
5 *this act contains costs mandated by the state, reimbursement to*
6 *local agencies and school districts for those costs shall be made*
7 *pursuant to Part 7 (commencing with Section 17500) of Division*
8 *4 of Title 2 of the Government Code.*

9 ~~SECTION 1. Section 10968 is added to the Welfare and~~
10 ~~Institutions Code, to read:~~

11 ~~10968. The department may develop a policy for hearing~~
12 ~~settlements that would be cost neutral or result in cost savings,~~
13 ~~including, but not limited to, the timely issuance of aid paid~~
14 ~~pending.~~

15 ~~SEC. 2. Section 10969 is added to the Welfare and Institutions~~
16 ~~Code, to read:~~

17 ~~10969. (a) The Legislature finds and declares that the financial~~
18 ~~cost of transportation to attend an administrative hearing prevents~~
19 ~~claimants from accessing a hearing and exercising their full right~~
20 ~~to due process of law. A hearing by telephone would enable the~~
21 ~~claimant to have a hearing from the claimant's residence without~~
22 ~~incurring the cost of traveling to the hearing location. Hearings by~~
23 ~~telephone would also save the state taxpayer funds by making it~~
24 ~~unnecessary for administrative law judges to travel to remote~~
25 ~~locations to conduct hearings if a hearing by telephone is requested~~
26 ~~by the claimant.~~

27 ~~(b) The department may conduct a hearing by telephone.~~

28 ~~SEC. 3. Section 10970 is added to the Welfare and Institutions~~
29 ~~Code, to read:~~

30 ~~10970. The department may develop a policy for the expedited~~
31 ~~adjudication of a case where the county fails to meet its burden of~~
32 ~~proof, as required by the department, provided that the~~
33 ~~implementation of this policy would be cost neutral or result in~~
34 ~~cost savings.~~

35 ~~SEC. 4. Section 10971 is added to the Welfare and Institutions~~
36 ~~Code, to read:~~

1 ~~10971. The department may set up a workgroup to meet with~~
2 ~~stakeholders to develop policies pursuant to Sections 10968 and~~
3 ~~10970.~~

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